IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

CRP.No. 304 of 2003

(AGAINST THE ORDER DATED 28/09/2002 IN EP. 321 /2001 IN OS.1001/1996 of I ADDL.M.C.,NEYYATTINKARA)

REVN. PETITIONER/DECREE HOLDER/PLAINTIFF

KUMARA VELU ASARI AYYAPPAN ASARI,
CHENTHIL NIVAS, PALLICHAL PAKUTHY,
PALLICHAL DESOM.

BY ADV. SRI.M.BALAGOVINDAN
ADV. SRI.P.M.JOSEPH
ADV. SRI.M.R.SASITH

RESPONDENTS/JUDGMENT DEBTORS/DEFENDANTS

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1. SUBHADRA, PANDARAVILAKATHU VEEDU, VEDIVACHAN COIL, PALLICHAL PAKUTHY, PALLICHAL DESOM.

2. EASWARY LEKSHMIKUTY, PANDARAVILAKATHU VEEDU, VEDIVACHAN COIL, PALLICHAL PAKUTHY, PALLICHAL DESOM.

3. SUBRAMANIAN KOCHUBABU, PANDARAVILAKATHU VEEDU, VEDIVACHAN COIL, PALLICHAL PAKUTHY, PALLICHAL DESOM.

4. SIVARAJAN DEVARAJAN, PANDARAVILAKATHU VEEDU, VEDIVACHAN COIL, PALLICHAL PAKUTHY, PALLICHAL DESOM.

5. SUJATHA SUMA, PANDARAVILAKATHU VEEDU, VEDIVACHAN COIL, PALLICHAL PAKUTHY, PALLICHAL DESOM.

R3 BY ADV. SRI.BIJU KURIAKOSE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 304 OF 2003

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Dated this the 6th July, 2007

O R D E R

The decree holder in O.S. 1001 of 1996 on the file of the Court of the First Addl. Munsiff, Neyyattinkara is the Revision Petitioner. The suit was for declaration of title and for fixation of boundary . The suit was decreed. E.P.No. 321 of 2001 was filed for execution of the decree. A commissioner was appointed for fixing the boundary as per the terms of the decree. The commissioner visited the property. There was obstruction by the judgment debtors . An application was filed for granting police aid to the commissioner. The commissioner inspected the property on 05.06.2002. Again there was obstruction . There after on 19.06.2002, he visited the property for inspection.

2. A report dated 22.06.2002 was filed by the commissioner stating that the decree holder himself stated before the commissioner that it was not necessary to fix the boundary as per the decree and a memo signed by the decree holder was handed over to the commissioner. Decree holder objected to this report and submitted that no such memo was handed over to the commissioner and that the commissioner insisted on signing a paper by the decree holder on 19.06.2002 when he inspected the property. It was contended by the decree holder that the memo submitted by the commissioner

is not a genuine one. The court below held that it cannot be believed that the commissioner would produce a memo which is not signed by the decree holder and that it cannot be believed that the commissioner obtained the signature of the decree holder on a blank paper . Execution petition was dismissed on that ground.

3. The court below may be right in holding that normally the commissioner would not produce a memo which is not signed by a party and that the commissioner would not fabricate a document. But the fact remains that when there was attempt to execute the decree, on more than one occasion, there was obstruction by the judgment debtors . The commissioner's report would indicate that on 05.06.2002 when he went to the property for inspecting the property to facilitate proper execution of the decree, he was obstructed . The commissioner again inspected the property on 19.06.2002. It is stated in the report that for the purpose of putting up a granite basement at E.H. line, the commissioner made necessary arrangements and started the work. It is further stated in the report that a memo signed by the decree holder on the basis of the decision taken on mediation was submitted to him, which he has produced before the court below.

4. Judgment debtors did not appear before this court . There is no case

for the judgment debtors that the matter was settled between the parties. No compromise petition was also filed. The decree is not executed. Whether the memo submitted by the commissioner is a genuine one or not is not very relevant at this point of time. The requirement is that the decree should be executed. The decree holder contends that the decree is liable to be executed and his prayer in the Execution Petition is for execution of the decree by putting up the boundary. A genuine prayer cannot be denied on the basis of a memo alleged to have been signed by one of the parties, when the parties did not enter into any compromise and when no compromise petition was signed and filed by the parties. The court below was not justified in closing the execution petition only on the basis of a memo, genuineness of which was disputed by the decree holder. It is not necessary to proceed with the case to ascertain whether the memo is a genuine one or not. In the facts and circumstances of the case, I am of the view that it is just and proper to restore the Execution Petition and to direct the executing court to pass such orders as are necessary for the execution of the decree. The court below shall afford an opportunity of being heard to the parties. If for some reason the commissioner feels any embarrassment, the execution court would be free to appoint another commissioner.

The Civil Revision Petition is accordingly allowed. The order passed by the court below is set aside . The execution court shall proceed with the execution, in accordance with law, taking into account the observations made above.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 304 OF 2003

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Dated this the 6th July,2007

O R D E R